

Federal Communications Commission

DA 97-1047

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DISPATCHED

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Spring Grove, Minnesota and
Osage, Iowa)

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)
)
) MM Docket No. 97-135
) RM-9087
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**NOTICE OF PROPOSED RULE MAKING
AND ORDER TO SHOW CAUSE**

Adopted: May 14, 1997

Released: May 23, 1997

Comment Date: July 14, 1997

Reply Date: July 29, 1997

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed by KVGGO, Inc. ("KVGGO"), requesting the substitution of Channel 282C3 for Channel 282A at Spring Valley, Minnesota. KVGGO also requests modification of its license for Station KVGGO(FM), Channel 282A, to specify operation on Channel 282C3. To accommodate the substitution at Spring Valley, KVGGO further requests the substitution of Channel 254A for Channel 279A at Osage, Iowa. KVGGO provided an engineering study in support of the proposal and indicated it would apply for Channel 282C3 at Spring Valley.

2. We believe KVGGO's proposal warrants consideration because the proposed substitution would provide Spring Valley with expanded reception service. Channel 282C3 can be allotted to Spring Valley, Minnesota, in compliance with the minimum distance separation requirements of the Commission's Rules provided Channel 254A is substituted for Channel 279A at Osage, Iowa.¹ The proposed substitution at Osage can be accomplished in compliance with the minimum distance separation requirements of the Commission's Rules at the current site of Station KCZY.² We shall also propose to modify the license for Station KVGGO(FM) to specify operation on

¹ The coordinates for Channel 282C3 at Spring Valley are 43-38-23 and 92-38-30.

² The coordinates for Channel 254A at Osage are 43-19-20 and 92-51-22.

Channel 282C3 in accordance with Section 1.420(g) of the Commission's Rules.

3. Whenever an existing licensee is ordered to switch frequencies in order to accommodate a new channel allotment, we require the proponent of a new allotment to make a commitment that it would reimburse the affected station for the costs incurred in changing frequencies. KVG0 has acknowledged its responsibility to reimburse Station KCZY, Osage, Iowa, for the reasonable costs in changing frequency.

4. In view of the above, we believe the public interest would be served by proposing the substitution of Channel 282C3 for Channel 282A at Spring Valley, Minnesota, since it could provide Spring Valley with expanded reception service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

Community	Channel No.	
	Present	Proposed
Spring Valley, Minnesota	282A	282C3
Osage, Iowa	279A	254A

5. IT IS ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, James Ingstad Broadcasting, Inc., the licensee of Station KCZY, Osage, Iowa, SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 254A in lieu of Channel 279A.

6. Pursuant to Section 1.87 of the Commission's Rules, James Ingstad Broadcasting, Inc., may not later than July 14, 1997, file a written statement showing with particularity why its license should not be modified as proposed in the Order to Show Cause. The Commission may call on James Ingstad Broadcasting, Inc., to furnish additional information. If James Ingstad Broadcasting, Inc., raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, James Ingstad Broadcasting, Inc., will be deemed to have consented to the modification as proposed in the Order to Show Cause and a final Order will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

7. IT IS FURTHER ORDERED, That the Secretary Shall Send by Certified Mail, Return Receipt Requested, a copy of this Notice of Proposed Rule Making and Order To Show to the following:

James Ingstad Broadcasting, Inc.
200 North 7th Street
Osage, Iowa 50461

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before **July 14, 1997**, and reply comments on or before **July 29, 1997**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

James A. Koerner
Baraff, Koerner & Olender, P.C.
Three Bethesda Metro Center, Suite 640
Bethesda, Maryland 20814-5392

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation

and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

**John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau**

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D. C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D. C.